

## ***Minority Report* and the Law of Attempt**

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Steven Spielberg's *Minority Report*,<sup>1</sup> released in summer 2002, derives from a Philip K. Dick short story first published in 1956.<sup>2</sup> The futuristic premise of both the film and short story, that the government can predict crime before it happens and so prevent it, broaches intriguing questions regarding criminal justice. In dealing with one of those questions, the movie ringingly endorses one of the hoariest and most questionable tenets of Anglo-American criminal law: the notion that a person can come quite close to committing a crime and yet may escape all criminal liability, even for the crime of attempt, if the target offense goes uncommitted. The fact that this idea holds centerstage in what was intended as popular entertainment says much about its persistence, despite decades of academic skepticism and legislative and judicial revision.

This Review first compares the short story and film, highlighting the differences effected by the screenwriters Scott Frank and John Cohen, which in turn spotlight issues regarding the act requirement for attempt. The movie implicitly supports the common-law approach to attempt liability, which makes it quite difficult to establish that a defendant has done acts sufficient to constitute an attempt, in contrast to the less stringent rule of the Model Penal Code ("MPC")—perhaps reflecting a visceral public approval of the common law's attitude, and in turn explaining why the MPC's recommendation on this point has not been very widely followed.

The movie's enthusiastic endorsement of the common law approach becomes almost absurd in the film's denouement. Despite its phenomenal success in stopping crime, the movie's "Precrime" unit is totally dismantled. A far more likely result would be that the Precrime program would be retained but tamed, and this review's conclusion briefly considers how the law might handle those apprehended under such a program.

### I

Essential to Dick's short story and to Frank and Cohen's screenplay are the three "precogs," who predict future crimes for Precrime, naming both the perpetrator and the victim. In the short story, the precogs are mutants who foresee all crimes a week

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<sup>1</sup> MINORITY REPORT (DreamWorks 2002).

<sup>2</sup> Philip K. Dick, *The Minority Report*, in THE MINORITY REPORT AND OTHER CLASSIC STORIES 71, 376 (2002).

or two in advance.<sup>3</sup> In the film, the precogs are the adult children of mothers addicted while pregnant to a virulent form of a fictional drug called “neuroine.” They can predict only intentional killings (which the filmmakers label “murders”), and much less in advance. This shorter time frame creates the tension in the movie’s opening sequence, a visual tour de force as John Anderton (played by Tom Cruise) uses hand-directed projection technology (while listening to Schubert’s *Unfinished Symphony*) to decipher the precogs’ visions of a husband inadvertently discovering his wife and her lover and impulsively stabbing them both to death. Anderton and his team then helicopter off, landing on a Georgetown street just in time to prevent the killings and make the arrest.

As evidenced by this sequence, the movie’s Anderton is relatively young, given his prominence as the number two man at Precrime, which has had the responsibility of preventing all murders in Washington for the preceding six years. As portrayed by Cruise, Anderton’s dedication to the work of Precrime derives from the kidnapping of his young son the same number of years before in Baltimore (where there was and is no Precrime program). The son, Anderton’s only child, remains missing and is presumed dead. Anderton’s grief has wrecked his marriage, addicted him to neuroine (in a newer, milder, but still illegal form), and made him a devoted believer in the work of Precrime.

None of this is in Dick’s short story. His Anderton, who heads Precrime, describes himself as “[b]ald and fat and old.”<sup>4</sup> He has a young wife and no children, and his interest in Precrime is more programmatic than personal. But these divergences are minor compared to the differences in the plot lines of the short story and film.

Both plots begin with the precogs predicting that Anderton will murder a person whose name he does not recognize. In the short story, Anderton learns that his projected victim is a retired general who is about to lead an Army revolt against the government, and whom Anderton might well have decided to kill to prevent the coup.<sup>5</sup> But the prediction causes Anderton to value self-preservation above all else, and so he runs from his own Precrime agents, vowing not to harm the general.<sup>6</sup> While fleeing, he learns of the existence, in his case and in others, of a “minority report,” a prediction of no crime by one of the precogs overridden by the contrary predictions of the other two.<sup>7</sup> Publication of this phenomenon, Anderton realizes, will severely discredit Precrime, as will the incorrect prediction in his case. The general uses this information as the announced basis for his revolt, which then appears quite likely to succeed.<sup>8</sup> Anderton ultimately shoots and kills the general, the coup is thereby

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<sup>3</sup> See *id.* at 73–74.

<sup>4</sup> *Id.* at 71 (original italics removed).

<sup>5</sup> See *id.* at 79, 95.

<sup>6</sup> See *id.* at 81–83.

<sup>7</sup> See *id.* at 85.

<sup>8</sup> See *id.* at 98–99.

thwarted, and Anderton and his wife are shipped off to another planet.<sup>9</sup>

Surprisingly, the short story's precogs foresaw all of this. Each of the three saw a different "time-path": Anderton is seen killing the general by one precog; he doesn't in the prediction of the second precog; he does in the vision of the third. The variations in the second and third predictions resulted from Anderton's knowledge of the immediately preceding prediction.<sup>10</sup> So, knowledge of the future can change that future. While this moral has some interesting implications for criminal law,<sup>11</sup> it seems to aim elsewhere. Perhaps the short story is best understood as a depiction of one aspect of Werner Heisenberg's renowned uncertainty principle: The fact of measurement always alters the item being measured.<sup>12</sup>

The movie is not interested in such esoterica. In the words of Gary Goldman, whose original script for *Minority Report* (which was much more faithful to the short story) was virtually rewritten by Frank and Cohen:

The movie . . . doesn't go to the roots of Phil Dick's story. . . . The basic sentiment of the movie is that the U.S. Constitution and our current ideas of civil rights are more important than having absolute truth . . . . These are good lessons but not what Philip K. Dick was writing . . . . Steven [Spielberg] took it as a given that there had to be free will, that the system was bad because it violated the constitution . . . . Dick was willing to question everything.<sup>13</sup>

An early scene in the movie displays the thematic importance of free will. Danny Witwer (played by Colin Farrell), a Justice Department official formally inspecting Precrime, raises the "legalistic drawback to Precrime methodology . . . . [W]e are arresting individuals who have broken no law." Anderton responds by rolling a ball across a table, which Witwer catches before it can hit the floor. When Anderton asks Witwer why he caught the ball, the response is that otherwise it would fall to the floor. Witwer smiles, getting the intended analogy, which Anderton underscores: "The fact that you prevented it from happening doesn't change the fact that it was going to happen." So murder is as predetermined as a ball's response to

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<sup>9</sup> See *id.* at 99–100.

<sup>10</sup> See *id.* at 101.

<sup>11</sup> See *infra* text accompanying note 39.

<sup>12</sup> See generally Edward Teo, *Einstein's Universe and Quantum Weirdness, Lecture 13: W. Heisenberg and Uncertainty*, at <http://www.physics.nus.edu.sg/einstein/lect13/lect13.ppt> (last visited July 3, 2003).

<sup>13</sup> Jason Koornick, *The Minority Report on 'Minority Report': A Conversation with Gary Goldman*, at <http://www.philipkdick.com/interviews/goldman.htm> (last visited Feb. 8, 2004). Gary Goldman and Ron Shusett sought screenwriting credit along with Scott Frank and Jon Cohen, but they lost a Writers Guild of America arbitration and settled for recognition as the executive producers of *Minority Report*. See *id.*; see also Frank Rose, *The Second Coming of Philip K. Dick*, at <http://www.wired.com/wired/archive/11.12/philip.html> (last visited Dec. 13, 2003).

gravity.<sup>14</sup> Still apparently believing that there is some scope for human choice, Witwer asks, “Ever get any false positives?” Anderton, a true believer in Precrime, denies their possibility, and with all the alleged perpetrators in suspended animation in a “hall of containment,” there is no way to dispute him.

Given this setup, it is not surprising that Anderton becomes a false positive. Spurred by an ambiguous exchange with Agatha, the sole female precog (memorably portrayed by Samantha Morton), Anderton begins investigating a murder in the early years of Precrime. His discussion of the case with Precrime’s director, Lamar Burgess<sup>15</sup> (played by Max von Sydow), alarms the department head; it will later be disclosed that Burgess had killed Agatha’s mother, a reformed drug addict who had wanted her daughter back, in order to save his program, and had rigged the recording of the precognitions to frame another man.<sup>16</sup> Very soon thereafter, the precogs predict that Anderton will kill Leo Crow. Though the name is unfamiliar to Anderton, the audience eventually learns that Burgess has arranged for Crow, a convict who has agreed to his own murder in exchange for money for his family, to impersonate the man who had kidnapped and killed Anderton’s son.<sup>17</sup>

Anderton flees, beginning a diverting but largely mindless portion of the movie filled with stunning special effects (and humorous predictions regarding technological improvements in police investigation and advertising). During his flight, Anderton learns of the existence of minority reports and then kidnaps Agatha so that she can help him discover his minority report—only to learn from her that there was no minority report in his case. All three precogs predicted that Anderton would kill Leo Crow.<sup>18</sup>

Continuing to run with Agatha from the pursuing agents of Precrime, Anderton finds himself in surroundings made familiar to him by the precogs’ visions of his crime. The movie’s free will theme begins to reassert itself when, after Anderton

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<sup>14</sup> On the DVD version of *Minority Report*, which is the source of all quotations from the film in this review, this scene is entitled “Pre-Determination.”

<sup>15</sup> Some have speculated, *see, e.g.*, Tom Cruise Web, *Minority Report* (2002), at <http://www.bluestrawberry.net/tomcruise/content.php?x=film-minorityreport.html> (last visited July 9, 2003), that Burgess’ name pays homage to Anthony Burgess, whose novel *A Clockwork Orange* also explores questions of free will and criminal justice. *See generally* Robert Batey, *Literature in a Criminal Law Course: Aeschylus, Burgess, Oates, Camus, Poe, and Melville*, 22 *LEGAL STUD. F.* 45, 56–61 (1998). There are also a number of parallels between Spielberg’s film and the movie version of *A Clockwork Orange* directed by the late Stanley Kubrick, whom Spielberg greatly admired and with whom he occasionally collaborated. *See* Tom Cruise Web, *supra*.

<sup>16</sup> The movie passes very quickly over how Burgess accomplished this killing without having been detected.

<sup>17</sup> This aspect of the plot makes little sense, for all Burgess would have had to convince Crow to do was to risk being murdered before Precrime intervened to prevent Anderton from committing the crime. However, it is necessary for other reasons that Crow wants to be killed. *See infra* text accompanying note 19. Given the effort needed to persuade one to forfeit his life, Burgess seems to have hatched his plan, located Crow, and convinced him to participate in record time.

<sup>18</sup> This seems the ultimate betrayal of Dick’s story, as the possibility of a minority report becomes little more than a red herring in the movie.

discovers Crow's name in a hotel register, Agatha says, "[L]eave. You have a choice. Walk away right now." Rejecting this advice, Anderton and Agatha are soon in Crow's empty hotel room, where there are scores of photos of young children on the bed, including pictures of Anderton's son. Agatha tells Anderton twice to leave and once to take her home, but he stays, murmuring, "I am going to kill this man." Crow arrives and confesses to murdering the boy as Anderton beats him; during all this, Agatha twice reminds Anderton, "You still have a choice." As he points his gun toward Crow, she abbreviates this to "You can choose," which she again repeats.

Gun in hand, ready to shoot, Anderton pauses—and Agatha's message finally connects. The pause lengthens and then with breaking voice, Anderton says, "You have the right to remain silent. Anything you say . . ." As he completes the *Miranda* warning, we in the audience realize that Anderton will not be committing murder, that the precogs' prediction was a false positive, and that free will does play a role in human affairs.

At this point the thematic message of the film is all but complete; however, the plot devices that set up this scene must be resolved. Crow is incredulous that Anderton will not kill him, thus depriving his family of the promised money. Crow angrily explains the deal that led him to falsely confess to kidnapping Anderton's son (but without identifying Burgess, whom Crow says he never saw), and then wrestles with Anderton, urging him to fire. The gun goes off, killing Crow. This accidental killing seems to validate the precogs' visions to some extent,<sup>19</sup> and justifies the continued pursuit of Anderton, who is subsequently caught and placed in suspended animation. With Agatha back at work as a precog, it is left to Anderton's divorced wife Lara (played by Kathryn Morris) to figure out that Burgess is the culprit and to free her ex-husband from the hall of containment, so that he may bring his former boss to justice.<sup>20</sup>

This is accomplished at a banquet honoring Burgess on his becoming head of the new national Precrime program. With the connivance of a friend at Precrime, Anderton displays to the entire banquet audience the precogs' visions of Burgess killing Agatha's mother years before. With a ceremonial but functioning gun given to him as a token of esteem, Burgess stalks Anderton, as the precogs simultaneously predict a murder with Anderton as victim and Burgess as killer. In the climactic confrontation, Anderton tells Burgess, "You still have a choice, Lamar, like I did." Burgess agrees, and inconsistently with the precogs' visions, shoots and kills himself,

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<sup>19</sup> The distances and angles in the precogs' visions are not quite consistent with an accidental killing, however. More significantly, the film says the precogs predict only murders, not unintentional killings like the shooting of Crow. One could argue that Crow intended to kill himself—but then his name would have come up as both victim and killer.

<sup>20</sup> And so that the couple may reconcile—one of the movie's last images is of Anderton living with a pregnant Lara.

instead of Anderton.<sup>21</sup> Thus the film gives one final endorsement to the concept of free will.

## II

For a teacher of criminal law and procedure, the moviehouse can offer no more professionally satisfying a moment than to witness, as the crucial turning point in a film, a law enforcement officer's decision to forgo killing a man and instead give his intended victim the *Miranda* warnings. Moreover, when Anderton makes this choice, he instantiates values reflected not only in the Constitution, but also in the law of attempt. For centuries Anglo-American courts have made it very difficult to satisfy the act requirement for attempt, in order to allow for changes of heart like Anderton's. Though criticized by commentators and academics, this approach continues in many jurisdictions. And its strong endorsement in a popular entertainment like *Minority Report* suggests that the common law concept of the act requirement for attempt accords with some deeply felt public notions of justice.

The common law has never settled on a single way to phrase the act requirement for attempt, other than to say the defendant must have gone beyond "mere preparation" to commit the crime.<sup>22</sup> Some courts define the test in terms of dangerous proximity to commission of the completed crime,<sup>23</sup> others as whether the defendant's acts unambiguously or unequivocally indicate the intent to commit the completed crime,<sup>24</sup> and many articulate no test at all, merely declaring a conclusion.<sup>25</sup>

Whatever test is used or implied, the common-law approach aims to give the defendant a rather large "*locus poenitentiae*," which Herbert Packer defines as "a point of no return beyond which external constraints may be imposed but before which the individual is free—not free of whatever compulsions determinists tell us he labors under but free of the very specific social compulsions of the law."<sup>26</sup> The

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<sup>21</sup> Burgess' decision, though it supports the movie's theme, seems wholly out of character. Like Anderton in the Dick story, Burgess must kill in order to validate the Precrime program (by confirming the precogs' prediction); the movie's Anderton even explains this to Burgess. Considering that he had dedicated his career to Precrime and had already killed to insure its success, it is far more likely that Burgess would support his program while revenging himself against the man who exposed him, rather than meekly committing suicide.

<sup>22</sup> See, e.g., *People v. Carpenter*, 935 P.2d 708, 751 (Cal. 1997).

<sup>23</sup> See generally JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW § 27.06[B][4] (3d ed. 2001); WAYNE R. LAFAVE, CRIMINAL LAW § 6.2(d)(1) (3d ed. 2000).

<sup>24</sup> See generally DRESSLER, *supra* note 23, § 27.06[B][7]; LAFAVE, *supra* note 23, § 6.2(d)(3).

<sup>25</sup> See, e.g., *Smith v. State*, 632 So. 2d 644 (Fla. Dist. Ct. App. 1994).

<sup>26</sup> HERBERT PACKER, THE LIMITS OF THE CRIMINAL SANCTION 75 (1968), *quoted in* RICHARD J. BONNIE ET AL., CRIMINAL LAW 219 (1997). Packer's introduction to the concept of *locus poenitentiae* relates it to the concept of free will:

The idea of free will in relation to conduct, is not, in the legal system, a statement of fact, but rather a value preference having very little to do with the metaphysics of determinism and free will. . . . Very simply, the law treats man's conduct as autonomous and willed, not because it is, but because it is desirable to proceed as

existence of such a “chickening out zone” (how a former student once translated “*locus poenitentiae*”) appears in famous cases like *People v. Rizzo*<sup>27</sup> and *Campbell v. Ward*.<sup>28</sup> In *Rizzo*, the defendants drove around New York City looking for a payroll clerk to rob, but attracted the attention of the police before they found the clerk; in *Campbell* one of the defendants entered a parked car, but exited when the owner approached. Despite the fact that all the defendants confessed that they intended to commit robbery and theft, respectively, the courts in both cases found their acts insufficient to render them guilty of an attempt.

The notion behind the granting of a large *locus poenitentiae* seems to be, as one court phrased it, that “the devil may lose the contest, albeit late in the hour.”<sup>29</sup> This is certainly the case with Anderton in *Minority Report*: He has declared his intention to kill Crow and is pointing a loaded weapon at his victim, when he changes his mind and begins invoking *Miranda*. The fact that he could have a change of heart, even in the moment before firing his gun, means that he is still at that moment in the *locus poenitentiae* and so should arguably be free of criminal liability for attempted murder.<sup>30</sup>

The partisans of Precrime in *Minority Report* denigrate this attitude, arguing for early intervention and punishment. So too have the critics of the common law approach to the act requirement for attempt.<sup>31</sup> Perhaps because fine police work in

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if it were. It is desirable because the capacity of the individual human being to live his life in reasonable freedom from socially imposed external constraints (the only kind with which the law is concerned) would be fatally impaired unless the law provided a *locus poenitentiae* . . . .

PACKER, *supra*, at 75, *quoted in* BONNIE ET AL., *supra*, at 219.

<sup>27</sup> 158 N.E. 888 (N.Y. 1927), *noted in* DRESSLER, *supra* note 23, at 393.

<sup>28</sup> [1955] N.Z.L.R. 471, *noted in* LAFAYE, *supra* note 23, at 549.

<sup>29</sup> *People v. Bowen*, 158 N.W.2d 794, 801 (Mich. Ct. App. 1968), *excerpted in* PETER W. LOW ET AL., *CRIMINAL LAW: CASES AND MATERIALS* 127–31 (2d ed. 1986).

<sup>30</sup> Whether Anderton satisfies one or more of the common-law tests at that moment is debatable. He seems dangerously proximate to success, but his acts are equivocal, especially for a law enforcement officer drawing down on a perpetrator.

This uncertainty perhaps reflects how courts have compromised the common law approach in order to accommodate the criticisms that it has received. Recent cases reflect this compromise in the attempt prosecutions of men who arrange, usually on the Internet, to meet undercover agents whom the men believe are children willing to engage in sex. *Compare* *State v. Duke*, 709 So. 2d 580 (Fla. Dist. Ct. App. 1998) (acts held insufficient for attempt), *and* *State v. Kemp*, 753 N.E.2d 47 (Ind. Ct. App. 2001) (same), *with* *United States v. Root*, 296 F.3d 1222 (11th Cir. 2002) (acts held sufficient for attempt); *United States v. Farner*, 251 F.3d 510 (5th Cir. 2001) (same), *United States v. Miller*, 102 F. Supp. 2d 946 (N.D. Ill. 2000) (same), *Kirwan v. State*, 96 S.W.3d 724 (Ark. 2003) (same), *Hudson v. State*, 745 So. 2d 997 (Fla. Dist. Ct. App. 1999) (same), *Dennard v. State*, 534 S.E.2d 182 (Ga. Ct. App. 2000) (same), *People v. Patterson*, 734 N.E.2d 462 (Ill. Ct. App. 2000) (same), *People v. Thousand*, 631 N.W.2d 694 (Mich. 2001) (same), *Chen v. State*, 42 S.W.3d 926 (Tex. Crim. App. 2001) (same), *and* *State v. Townsend*, 20 P.3d 1027 (Wash. Ct. App. 2001) (same).

<sup>31</sup> See generally MODEL PENAL CODE § 5.01 cmt. 5–6 (1985); Herbert Wechsler, William Kenneth Jones & Harold L. Korn, *The Treatment of Inchoate Crimes in the Model Penal Code of the American Law Institute: Attempt, Solicitation, and Conspiracy* (pt. 1), 61 COLUM. L. REV. 571, 586–95 (1961).

cases like *Rizzo* and *Campbell* often goes unrewarded by any significant criminal conviction, these critics have advocated an act requirement for attempt significantly easier to satisfy, with the MPC's test becoming their rallying cry. The MPC requires proof only of a "substantial step" toward commission of the crime (less than dangerous proximity to the crime) that is "strongly corroborative" of the defendant's criminal intent (less than unequivocal evidence of intent).<sup>32</sup> The MPC also recommends increasing the punishment for an attempt so that it equals the penalty for the completed crime in all but the most serious offenses.<sup>33</sup> The MPC's attempt provisions can thus be seen as movement in the general direction of Precrime.

In an era when being "tough on crime" has reaped enormous political rewards, it is surprising that the MPC's attempt provisions have not been more widely adopted. A legislative survey I conducted in 1998 found that only one state had adopted the MPC's act requirement for attempt verbatim, eleven states use some combination of the "substantial step" and "strongly corroborative" language, and eleven more use only the term "substantial step," either without defining it or defining it more narrowly than the MPC.<sup>34</sup>

Of course, several courts—most notably, all the federal circuits—have adopted the MPC's test without prior legislative action. But tellingly, these courts have frequently refused to construe the MPC language as its drafters apparently intended. For example, in *United States v. Harper*,<sup>35</sup> police apprehended the heavily armed defendants as they waited in a car near an ATM in which they had created a "bill trap"; they planned to rob the ATM after the arrival of the technicians they knew would come to fix the problem. The federal circuit court held that the defendants' behavior did not constitute a substantial step.<sup>36</sup> So, even when the more permissive MPC test has been adopted, judges regularly interpret it to create a greater *locus poenitentiae* than the drafters of the MPC intended.

Legislative and judicial hesitancy to enthusiastically embrace the MPC's version of the act requirement for attempt suggests latent community support for the individual's right to wrestle with the devil, up to the very moment of crime commission. Steven Spielberg, whose ability to know what pleases the public has earned him millions, must have sensed this same sentiment, or he would not have

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<sup>32</sup> MODEL PENAL CODE §§ 5.01(1)(c), (2) (1985). The MPC also contains a list of acts that can satisfy the substantial step test, if they are also strongly corroborative of the actor's criminal intent. *Id.* § 5.01(2).

<sup>33</sup> *Id.* § 5.05(1).

<sup>34</sup> See Robert Batey, *Paul Robinson's Criminal Law*, 73 NOTRE DAME L. REV. 781, 794 & n.121 (1998).

<sup>35</sup> 33 F.3d 1143 (9th Cir. 1994), noted in BONNIE ET AL., *supra* note 26, at 229–32.

<sup>36</sup> *Id.* at 1146–58; see also *United States v. Yossunthorn*, 167 F.3d 1267 (9th Cir. 1999) (defendants agreed to purchase heroin at a particular location, but after extensively casing the location, they departed without making the purchase; held, not a substantial step); *United States v. Still*, 850 F.2d 607 (9th Cir. 1988) (disguised defendant arrested with robbery paraphernalia 200 feet from bank he intended to rob; held, not a substantial step); *United States v. Buffington*, 815 F.2d 1292 (9th Cir. 1987) (armed defendants apprehended just outside bank they intended to rob; held, not a substantial step).



posited free will, to which the sentiment is an important corollary, as the central theme of *Minority Report*.<sup>37</sup>

Of course, contemporary criminal law is not single-mindedly committed to the maintenance of a *locus poenitentiae*. Many jurisdictions that have adopted the MPC definition of attempt no doubt apply it faithfully, and some courts certainly have compromised the rigor of the common law approach.<sup>38</sup> Even more importantly, other bodies of law—conspiracy, most notably<sup>39</sup>—can be used to criminalize conduct even though the defendant might still “chicken out.”

These aspects of modern law also accord with public sentiment, especially after the terrorist attacks of September 11, 2001. What is remarkable, however, is that despite our fear of terrorism and the willingness of some to sacrifice civil liberties in order to prevent it, many Americans still hold values that accord with legal doctrines honoring free will and preserving a zone in which the individual remains free to contend with his or her conscience. So, less than a year after September 11, they would stream in droves to a movie that champions those doctrines and not leave the theater arguing with the film’s premises.

### III

Pursuing its premises, *Minority Report* ends with Anderton, in a voiceover, explaining that the Precrime program was “abandoned” and all its arrestees “unconditionally pardoned and released.” Even for a believer in free will and a large *locus poenitentiae*, this result seems extreme. After all, Precrime had all but eliminated murder in Washington, an achievement difficult to forget or to forgo. A far more likely result politically is that the government would have installed a sanitized version of Precrime.<sup>40</sup> This taming of Precrime would occur not in the investigation or prevention of murder, which would likely go on as before, but in the disposition of those apprehended.

What should be done with thwarted perpetrators? One answer is nothing at all, other than warning them of what they were about to do. The short story exemplifies

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<sup>37</sup> Spielberg’s personal commitment to this theme is evident in the extensive “bonus features” accompanying the DVD version of *Minority Report*, in which he says of Precrime: “None of us would ever want to see that happen, and change the rights that we have fought and died for in this country.” MINORITY REPORT: THE STORY, THE DEBATE (DreamWorks 2002).

<sup>38</sup> See *supra* text accompanying note 34; see also *supra* note 30 (listing cases in which courts have taken a compromise approach to defining attempt liability).

<sup>39</sup> For example, the *Harper* court upheld the defendants’ conspiracy convictions, while denying their liability for attempt. See 33 F.3d at 1148–49; see also *supra* text accompanying notes 35–36. In addition, countless specific statutes criminalize “inchoate or anticipatory conduct.” LOW ET AL., *supra* note 29, at 140–41; see *supra* note 30; see also, e.g., *State v. Duke*, 709 So. 2d 580, 581 (Fla. Dist. Ct. App. 1998) (Harris, J., concurring specially) (defendant’s acts are insufficient for attempt, but he would have been guilty under recently passed statute).

<sup>40</sup> This would depend on finessing the pesky problem of the precogs’ right to try to live normal lives (which the film honors at its end by showing them comfortably housed, at government expense, in an isolated cabin), rather than to participate in Precrime.

the effectiveness of such a warning, as its John Anderton at first does all he can to avoid killing his predicted victim.<sup>41</sup> A step up from merely providing information is keeping the would-be killer under surveillance. For example, the voiceover at the movie's end indicates that the government is keeping an eye on some of those released from the hall of containment. But many prevented from committing their crimes will require something more than warning or surveillance. For them a broad range of treatment, offered for voluntary adoption but coerced when necessary, would likely be available.

The film's characters suggest the breadth of the range of treatment. If *Precrime* had apprehended Anderton with his gun pointing at the supposed killer of his son, his treatment regime might have comprised grief therapy and marital counseling, as well as programs addressing his drug addiction. For the husband stopped from killing his wife and her lover in the movie's opening sequence, anger management training would surely have been part of his disposition. But more serious options would have to be considered for Burgess, if *Precrime* had arrested him just before his predicted killing of Anderton. Burgess had killed twice before,<sup>42</sup> and so seems destined for preventive detention with serious psychotherapy, probably including psychoactive drugs.

All these possibilities raise another staple of science fiction, the advent of the therapeutic state. Considering current trends that blend criminal justice and the law of civil commitment—most notably, the implementation of sexual predator statutes—the therapeutic state would be an apt area for contemporary speculation. But that's another movie,<sup>43</sup> and another review.

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<sup>41</sup> He changes his mind only when he sees the adverse political consequences of his failing to kill the general.

<sup>42</sup> In addition to Agatha's mother, Burgess had also fatally shot Danny Witwer (while Agatha's kidnapping had disabled *Precrime*), because he had told Burgess that he suspected Anderton had been set up.

<sup>43</sup> One such film is, of course, *A Clockwork Orange*. See *supra* note 15.